

Republic of Kenya

High Court, at Nairobi (Appellate Side)

Criminal Appeal No 997 of 1984

Chege

v

Republic

(Appeal from the District Magistrate's Court at Kandara, L T Macua Esq, Criminal Case No 825 of 1983)

Advocates

Appellant present and unrepresented

W Ngugi (Miss) (State Counsel) for respondent

October 22, 1985, Mbaya J delivered the following

Judgment.

The appellant was convicted of creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) of the Penal Code. It was alleged by the prosecution that he abused the complainant, an assistant chief of his area Mr Evan Nganga PW 1 and threatened to beat him. The appellant was sentenced to pay a fine of Kshs 300, and in default to serve 2 months in EMPE. He appeals against his conviction.

It is conceded by the state that this conviction is unsafe because the assistant chief seems to have had "fitina" against the appellant, because the latter had complained against him (the assistant chief) to the District Officer of the area: see appellant's letters exhibit A and B addressed to the District Officer. There is further more discrepancy between the evidence of the assistant chief and that of Nginya PW 2 as to what the appellant did in the alleged commission of the offence. In the circumstances, I must allow this appeal. I quash the conviction and set aside the sentence.

October 22, 1985

Mbaya J